
(1998) 05 GUJ CK 0004
In the Gujarat High Court

Jitendra Construction Co. and Others

APPELLANT

Vs

Kankaria Maninagar Nagrik Sahkari Bank Ltd.

RESPONDENT

Date of Decision : 12-05-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 14, 15

Citation : (1999) 1 GLR 444

Hon'ble Judges : C.K.Thakker, J;A.L. Dave, J

Bench : Division Bench

Judgement

C.K. Thakker, J.—This Civil Application is filed by the applicants-appellants for condonation of delay in filing Letters Patent Appeal No. 600 of 1998.

2. The Registry has raised an objection that the appeal filed by the applicant-appellant was barred by 1,272 days, i.e., about four years. We had issued Rule which was made returnable. We had heard the matter on 8th May, 1998 but it could not be completed on that day because of other important matters and hence with consent of the parties, we have heard this Civil Application today, as the Bench is available.

3. The applicant was the original petitioner in Special Civil Application No. 11291 of 1994. An ex parte award was passed by the Board of Nominee in Lavad Suit No. 2998 of 1989 on May 17, 1991 against the applicants. Being aggrieved by the said award, an appeal was preferred which was dismissed by the Gujarat Co-operative Tribunal on August 12, 1994. Against that order the above petition was filed which was dismissed and the present Letters Patent Appeal is filed against the order passed in Special Civil Application.

4. Now, it may be mentioned that Special Civil Application was disposed of by the learned single Judge on merits, by an order dated September 28, 1994 whereas the present Letters Patent Appeal was filed on April 24, 1998 and that is how there is delay of about four years.

5. In Civil Application No. 4142 of 1998, the applicants have stated that after dismissal of Special Civil Application by the learned single Judge, first Review Application No. 33 of 1994 was filed before the Tribunal on October 17, 1994 which was dismissed on April 16, 1996. Again, another review application was filed being Review Application No. 14 of 1996 and that was also dismissed by the Tribunal on March 24, 1998.

6. It was submitted by the learned Counsel for the applicants that there was no suppression of fact on the part of the applicants. It was urged that the applicants were proceeding bona fide by filing review applications before the Co-operative Tribunal, i.e., in a wrong forum. The case is, therefore, covered by Section 14 of the Limitation Act, 1963, which excludes time taken in proceeding in Court without jurisdiction. It was also submitted and the said fact is mentioned in the petition itself. The applicants had thus acted as per the advice of their Advocate and even if the Court is of the opinion that there was some error on the part of the applicants, as they acted as per the said advice of their Advocate, delay deserves to be condoned.

7. For the above submission, reliance was placed on Sections. 14 and 15 of the Limitation Act, 1963 and also on the following decisions:

(1) Nandkishore v. State of Punjab 1996 LIC 610.

(2) G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, .

(3) Mata Din Vs. A. Narayanan, .

(4) Kesharibhai Jeshingbhai v. Bai Lilawati Wd/o. Jagatbhai Jeshingbhai and Ors. (1963) 4 GLR 59.

8. Mr. Gade, learned Counsel for the opponents, on the other hand, contended that no cause much less sufficient cause has been made out by the applicants for condonation of delay and in the facts and circumstances, delay should not be condoned. The award passed by the Board of Nominee was confirmed by the Gujarat Co-operative Tribunal and also confirmed on merits by the learned single Judge in the year 1994. He submitted that this is eminently a fit case in which not only the application should be dismissed but exemplary costs should be awarded to the opponent-bank. He stated that though the amount was taken by the applicants, it was not repaid any hence the opponents had to approach the Board of Nominee and an award was passed. Reliance was also placed on the decision of the Supreme Court in R.K. Ramchandran v. State of Kerala and Anr. JT 1997 (8) SC 189 wherein the Hon'ble Supreme Court observed that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds.

9. In the facts and circumstances of the case, in our opinion, the application must be rejected. It is an admitted fact that the award was made by the Board of

Nominee which was confirmed by the Co-operative Tribunal and a petition was also dismissed. As stated above, the petition was not dismissed on technical ground but on merits and the finding on merits recorded by the Tribunal was confirmed by the learned single Judge. While dismissing the petition, the learned single Judge observed that from the record it was clear that summons was served upon the defendant and that one Nathiben who was close relative of the partners of the petitioner firm was served and hence it could not be said that the award was passed without issuing notice and was violative of the principles of natural justice. On merits, the learned single Judge held that in exercise of the powers under Article 227 of the Constitution of India, the High Court would not re-assess and re-appraise the evidence and enter into factual investigation of facts. The Court further stated that apart from that, the Court was satisfied that the conclusion reached by the appellate Court upon investigation of facts on the dispute in focus was justified and, therefore, in the opinion of the Court, the petition under Article 227 was meritless and required to be dismissed.

10. In our opinion, once the petition was dismissed by the learned single Judge on merits, it was not open to the applicants to file an application for review before the Co-operative Tribunal as in the eye of law the order passed by the Tribunal was merged with the order passed by the learned single Judge in Special Civil Application. No doubt, the applicants had disclosed that fact and it was stated in the application for condonation of delay itself. The question is as to whether such an application would be Maintainable when such application was not competent and after dismissal of first application, second application was filed by the applicant against seeking review, it cannot be said that it was a sufficient ground. If the contention is upheld, a person can successfully avoid the provisions of Limitation Act by making application after application.

For the foregoing reasons, in our opinion, no sufficient cause has been made out. The application deserves to be dismissed and is accordingly dismissed.

11. In view of the order passed in this Civil Application, Letters Patent Appeal does not survive. Similarly, no order is required to be passed on Civil Application for stay. Orders accordingly.

12. The learned Counsel for the applicants prays that the order passed by us may be stayed for some time so as to enable the applicants to approach higher forum. As seen above, the award was passed by the Board of Nominee in the year 1991. Appeal was dismissed and the petition also met with the same fate in 1994. We are in 1998. It is the case of the applicants that they have paid substantial amount but we are not entering into that aspect. When the petition was dismissed in 1994 i.e., before about four years and when we have not even found prima facie ground for condonation of delay, no interim relief can be granted. Hence, the prayer is rejected. D.S.